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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,731	03/23/2001	George Harry Hoffman	062834-0179	8181
22428 7590 12/10/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER GORT, ELAINE L	
			ART UNIT 3687	PAPER NUMBER
			MAIL DATE 12/10/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/815,731

Applicant(s)

HOFFMAN ET AL.

Examiner

Elaine Gort

Art Unit

3687

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-6, 8-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1, 3-6, 8-11 and 13-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The claims recite computer readable instructions, not within the technological arts. Examiner contends that a process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Neither of these requirements are met by the claims, therefore the claims do not qualify as a statutory process and do not positively recite the subject matter that is being transformed, by identifying the material that is being changed to a different state.

The claims recite only a nominal recitation of a computer system and are thus not a particular apparatus. Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process under section 101. *Benson* 409 U.S. at 71-72.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1, 3-6, 8-11 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The claim(s) are replete with indefinite language, examples follow:

Claim 1 recites the limitation "the database" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the production" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the at least one store" in line 14. There is insufficient antecedent basis for this limitation in the claim.

It is unclear in claim 1 line 18 regarding "a supplier". Is this supplier the same as in line 1?

It is unclear in claim 1 line 1 regarding "a distributor". Is this distributor the same as in line 1?

Claim 1 recites the limitation "the supply chain manager" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the amount the store" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Applicant must review and address all claims for occurrences of indefiniteness.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-6, 8-11 and 13-15 are rejected, as best understood, under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US Patent 6,901,381) in view of Hafner et al. (US Patent 5,893,076).

Brown et al. discloses the claimed method/system/computer product for providing a supplier or distributor interface, comprising:

receiving data from a store, the data relating to an amount of goods that are manually produced based on a recipe and sold by the stores (for example column 11 lines 15 to column 12 lines 21 discuss a computer system that tracks items or products sold, such as a hamburger meal that is produced manually based on a recipe stored in a file that contains the ingredients to the hamburger meal, for example including the hamburger patty.); aggregating by one or more computers the data based on one or more supplier and/or distributor parameters (the number of hamburger patties used based on the number of hamburger meals sold are accounted for); receiving a request relating to production of the goods (POS system receives a request for the sale of, for example, a hamburger meal, column 11 line 15+. The sale relates to production of the goods as the good must be produced to be sold.); extracting in response to the request

the recipe from a database relevant to the production of the goods and that uses at least one material in the production of the goods (a file contains a recipe for items sold that includes ingredients within the good sold such as a hamburger patty in a hamburger meal, column 11, lines 15+) and an the amount of the material sold to the store (system keeps track of ingredient inventory from the time of receipt from a "particular commissary", column 11, line 61+, which includes the amount of patties sold by the commissary to the store. For example 10 hamburger patties.); calculating by one or more computers based on the recipe an amount of the at least one material that should have been used for the amount of the goods sold by the at least one store (system calculates how many patties should have been used for the hamburger meals sold); calculating by one or more computers a variance between the amount of the material sold to the store and the amount of the material that should have been used based on the recipe for the amount of the goods sold (system calculates the variance when it calculates the difference between the amount of patties sold from the commissary, for example 10, and the amount of material that should have been used based on the recipe for the amount of hamburger meals sold, such as 3 hamburger meals sold, resulting in 3 patties sold, resulting in a variance of 7 patties left for sale), and transmitting information relating to the variance for use by the store using the material to make the goods (column 12 lines 1+ discuss ability to view the current inventory by the available ingredient for use by the user).

but is silent regarding: where the data is received from a plurality of stores of a supply chain and where the system utilizes a network/Internet.

Hafner et al. teaches that it is known in the art of supply chain systems to receive data from a plurality of stores of a supply chain and to use a networked/Internet displaying computer system (column 3, line 19+) for communicating, tracking sales and ordering products for multiple locations (column 2 line 21).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method/system/computer of Brown et al. with the plurality of stores and networked Internet system as taught by Hafner et al., in order to communicate, track sales and place orders for multiple locations.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 3-6, 8-11 and 13-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/
Primary Examiner, Art Unit 3687

Elaine Gort
Primary Examiner
Art Unit 3687

December 5, 2008